

General Information Letter: Nexus issues are not generally appropriate matters for rulings.

November 9, 2007

Dear:

This is in response to your letter dated September 10, 2007 in which you request a letter ruling. The nature of your request and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's web site at [www.Iltax.com](http://www.Iltax.com).

Your letter states as follows:

Our company has ceased doing business in the state of Illinois. However we remain liable for rent on the facility that previously housed our Illinois operations. Does the company still have nexus with Illinois for income tax purposes? Would the answer be any different if we were to sublet the property?

## **RULING**

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. For information regarding nexus, see Department of Revenue Regulations Section 100.9720 (accessible from the Department's web site). In addition, the following general information may be provided.

The United States Constitution limits a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) The Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection conferred by Public Law 86-272. (15 U.S.C. § 381) Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property.

In general, the Department interprets the concept of nexus as broadly as possible. Where any part of a corporation's income is allocable to Illinois under Article 3 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*), unless protected under P.L. 86-272, the Department will assert jurisdiction to tax.

Section 502(a) of the IITA sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

- (2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a corporation must file an Illinois income tax return if it incurs a liability for tax imposed under Section 201 of the IITA, and in the case of a corporation qualified to do business in Illinois, if it is required to file a federal return (regardless of whether it is liable for Illinois tax). A corporation is liable for Illinois income tax under Section 201 if it derives "net income" as defined under IITA Section 202. IITA Section 202 defines net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. The above provisions may be accessed from the Department's web site.

Base income that constitutes nonbusiness income is allocated to Illinois under IITA Sections 301(c)(2) and 303. Under IITA Section 303(c)(1), nonbusiness rental income from real property that is located in Illinois is allocable to Illinois.

Base income that constitutes business income is apportioned to Illinois under IITA Section 304. IITA Section 304(a) provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a corporation deriving business income from Illinois and one or more other states (other than an insurance company, financial organization, or transportation company) shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere. In general sales of tangible personal property are in Illinois if the property is shipped to a purchaser within Illinois. For taxable years ending before December 31, 2008, sales other than sales of tangible personal property are allocable to Illinois if the income-producing activity that gave rise to the receipts is performed wholly in Illinois, or the income-producing activity is performed in Illinois based on costs of performance. Under Department Regulations § 100.3370(c)(3)(D)(i), rental income from real property located in Illinois is considered an Illinois sale. The above provisions may be accessed from the Department's web site.

The information you have provided is not sufficient to indicate whether your current operations may generate an Illinois income tax liability. However, you may incur Illinois income tax liability by earning rental income through the lease of real property located in Illinois.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

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